IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1692 OF 2004

IN

SUIT NO. 3757 OF 2004

Mr. Madhukar Venkatesh
Ullal .. Plaintiff.

vs.

M/s. Anita Hermy D'Souza
& Ors. .. Defendants.

And

M/s. Marvellous Builders
Pvt. Ltd., .. Respondents.

And

Sayed Mustafa Hussaini .. Applicant.

Mr. B. Joshi for applicant.
Mr. P. Kawli i/by G. Jhaveri for plaintiff.

CORAM : S.U.KAMDAR, J.
DATE : 13th April, 2005.

P.C.

1. The present chamber summons is taken out inter alia for the relief to add the applicant as a party defendant to the suit. In the present suit both the applicant herein as well as various other

parties to the suit are claiming right, title and interest in respect of the property being plot of land bearing C.T.S. No. 1813 & 1813/1 final Plot NO. 348 TPS (V), situated at Vile Parle (East), Mumbai 400 057. It is the case of the applicant that they have purchased the said property under an agreement for sale dated 7.2.2002. It is his further case that however, subsequent to the purchase of the property in April/May 2002, various other third parties are claiming rights by a registered conveyance duly registered with the Sub-Registrar of Assurances. It is the case of the applicant that since the plaintiff has not joined the applicant as a party to the suit, his rights are likely to be affected by virtue of various orders likely to be passed and which has been passed in the pending suit.

2. On the other hand, the learned counsel for the plaintiff has opposed the chamber summons on the following two grounds.

(i) Firstly, it has been contended that the agreement dated 7.2.2002 is back dated agreement and it has been lodged for registration only after the conveyance is registered in April/May, 2002 in favour of the third party. It is, therefore, contended that the applicant has no right whatsoever under an agreement dated 7.2.2002. It his further

case that the agreement is not even validly executed. I am not inclined to go into all the aspects of the same as they are on merits of the case and the merits of the case are required to be determined at the hearing of the suit and not at the stage of amendment. The only issue which is required to be determined is whether the applicant is claiming any right in respect of the properties which are subject matter of the suit itself. It is not disputed before me that the applicant is claiming right in respect of the properties which are subject matter of the suit. In view thereof, I am not inclined to accept the aforesaid contention of the learned counsel for the plaintiff.

3. The next contention raised by the learned counsel for the applicant is that the present chamber summons should be dismissed because of a consent terms arrived at in Notice of Motion No. 120 of 2004. It has been provided in clauses (b) and (c) of the said consent terms that the rights of the plaintiffs are assigned in favour of defendant nos. 1 to 8 and defendant nos. 10 and 11 respectively. It is further contended by the learned counsel for the plaintiff that in view of the order passed by way of a consent terms, the suit itself is as good as decreed in respect of the properties in which the applicant is claiming right, title and interest. In view thereof according to

the plaintiff the present chamber summons should be dismissed. I have read the consent terms which have been executed by and between the parties. Firstly, the said consent terms are executed in notice of motion no. 120 of 2004. Nowhere in the said consent terms it is provided that the suit or any portion of the claim in the suit has been decreed or dismissed. In view thereof, it is clear that the suit is still pending. The orders obtained by consent terms in notice of motion no. 120 of 2004 are obviously therefore in the nature of interim orders and they are ultimately to abide by the final outcome of the suit. In view thereof, I am not inclined to accept the second contention of the learned counsel for the applicant that merely because consent terms are executed at the interim stage in respect of the property in which applicant is claiming interest he should not be implemented as party to the suit. I, therefore, find that the applicant being necessary and/or in any event a proper party to the suit so as to protect his interest in the suit property should be allowed to be joined as a party defendant to the said suit. In view of the aforesaid, the chamber summons is made absolute in terms of prayer clause (a). In so far as prayer clause (ai) is concerned, the learned counsel for the applicant does not press for the same. In so far as the remaining prayers are concerned, the same are kept open to be decided in

the suit. The chamber summons is accordingly disposed of. No order as to costs.